

Cleveland State University
EngagedScholarship@CSU



Cleveland-Marshall
College of Law Library

1962-1966 Federal Habeas Corpus

1954-1966 Post-Trial Motions, Appeals, & Habeas
Corpus

11-4-1962

62/11/04 Letter from Paul Holmes to F. Lee Bailey

Paul Holmes

How does access to this work benefit you? Let us know!

Follow this and additional works at: https://engagedscholarship.csuohio.edu/sheppard_habeas

Recommended Citation

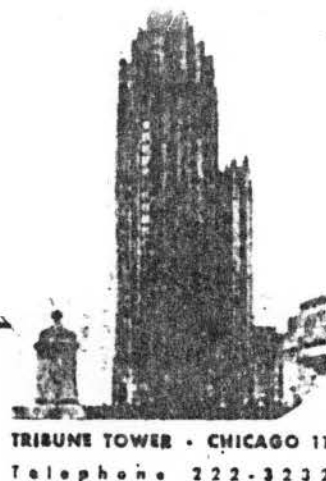
Holmes, Paul, "62/11/04 Letter from Paul Holmes to F. Lee Bailey" (1962). *1962-1966 Federal Habeas Corpus*. 36.
https://engagedscholarship.csuohio.edu/sheppard_habeas/36

This Miscellaneous Document is brought to you for free and open access by the 1954-1966 Post-Trial Motions, Appeals, & Habeas Corpus at EngagedScholarship@CSU. It has been accepted for inclusion in 1962-1966 Federal Habeas Corpus by an authorized administrator of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

Chicago Tribune

THE WORLD'S GREATEST NEWSPAPER

Nov. 4



Dear LEE:

In regard to the Eberling matter I lack information to form an opinion as to what should be done.

I presume Eberling is the window-washing contractor who a short time after Marilyn Sheppard's murder was revealed to be a kleptomaniac type of thief who had pilfered the homes of many of his clients. I recall that he had kept the stolen articles in his home and that owners recovered most of the stolen property. He was not prosecuted at the time but I have a hazy impression that he got in the same kind of trouble again later.

I know nothing about any investigation of him by the authorities on the theory he might have been Marilyn's slayer but presume he must at least have been questioned about it and may have taken a lie test. I do know that the investigator employed by the Sheppards after the trial (the same man who photographed the Mary Cowan blood test card in the prosecutor's office) had a firm impression that this window washer might be the guilty man but do not know on what this impression was based.

Now we apparently have a situation where we are getting recurring rumors that a new investigation of Eberling would be fruitful. Faust and Seacrest had run onto something they thought important. Guy Hardy is presently urging a competent inquiry and you report that Sherman is inclined to agree.

The decision to be made now is whether it would be advisable to cause such an inquiry to be instituted at the present time. Clearly the answer should be "no" unless there is good reason to believe that such an investigation would turn up a strong probability that Eberling was the slayer.

It may be that such reason exists. If so we would need all the now-known facts to decide on a course of action. Is Eberling, for instance, supposed to have made incriminating statements to persons who will reveal them? Would the investigation be directed along this or some other line?

I do not need to remind you that it is ticklish business to accuse a man of murder--especially when the murder is one which the authorities regard as solved and for which another man is serving time. It would be highly dangerous from the standpoint of libel for any newspaper or magazine to initiate an investigation under such circumstances; it would be impossible ever to print an account of such an investigation unless it was so successful that it produced a confession or prosecution by public authorities.

Thus I have no hesitation in saying that no newspaper would undertake it--no Cleveland paper for policy reasons and no outside paper because of the combination of hazard and unliklihood of usable results.

In the magazine field probably only Argosy would consider it, and would do so only if promising results could be foreseen. I share your distrust for Argosy's altruism. It is possible Argosy, if apprized of the circumstances, would set Gene Lowall on the scent. He would come up with something that could be safely written about. It might not be favorable to Sam.

I know Harry Steeger, the Argosy owner and editor, and our relations have always been friendly. Yet he passed up a chance to serialize my book prior to publication and permitted Lowall a few months later to run an article which ignored the book altogether.

In the unlikely event that Steeger should authorize me to supervise an Eberling investigation on behalf of Argosy at Argosy expense I would not decline the assignment without serious thought, altho it might turn out that there would be a conflict of Tribune interest which would make it impossible. The initiative would have to come from Steeger and I see no prospect of it.

As regards Steve's idea that an investigation financed by an independent source, such as a magazine or newspaper, would have more weight with authorities than one undertaken by Sam's counsel, I am constrained to say that, well-meaning as the idea undoubtedly is, it has no practical validity. A magazine or newspaper investigation would be far more suspect than one conducted frankly on Sam's behalf.

This case will not be won with scatter shots or by changing objectives in midstream. The present objective is a lie test. We will get it, or not get it. We will know before the end of the year. We may get a big lift from Tuesday's election.

If we get a lie test, and Sam runs a clear test, we can then swiftly take the next step--the federal courts. This may be attempted rehearing in the U.S. Supreme court or habeas corpus in the District court. The lines are clearly drawn in either case--Sam did not get a fair trial compatible with due process. This can be clearly demonstrated if the case can be brought before a judicial forum.

The whole case will be weakened by setting out on a belated and collateral pursuit of the real murderer. At this point we do not need the murderer. Sam will be freed because he is innocent--not because some one else may be guilty. From all I know about it (and it is not much) there is no more chance now of getting a confession from Eberling or working up a convincing case against him than of indefinitely preserving a snowball in Hell.

Ailey--3

The pressure is on from EVERY conceivable source to halt this
litigation and get the family embarked on another wild goose
chase.

You may, of course, pass this letter on to Steve.

Meanwhile I have my fingers crossed for the success of Judge
Wingsley Taft day after tomorrow.

Sincerely,